

91-1041

SUPREME COURT, U.S.

FILED

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No. _____

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1991

GREGORIO D. TAITAGUE and HENRY BLAS,
Petitioners,

v.

FIRST ISLAND INDUSTRY, INC., a Guam Corporation;
CALVO'S INSURANCE UNDERWRITERS, INC.,
a Guam Corporation;

OXFORD PROPERTIES and FINANCE, LTD.,
a Hong Kong Corporation;

The Estate of MARIA TORRES MARTINEZ Deceased,
by Father VICENTE T. MARTINEZ, Administrator;

and all other persons unknown

(DOES I through V) claiming any right, title, estate,
lien or interest in the real property described
in the complaint adverse to Respondents' ownership,
or any cloud upon Respondents' title thereto,

COUNTY OF LOS ANGELES,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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December 20, 1991



QUESTIONS PRESENTED

1. Whether a judgment which is void because it was rendered without service of process ever being made upon a party may be used to deprive that party of substantial property rights?
 2. Whether a limitation statute may require one in undisturbed possession of real property to bring an action within a specified period of time or thereby be deemed to have forfeited that property?
 3. When a river constitutes a boundary between two lots and where in the registration of one of the lots the course of the river is incorrectly depicted whether the boundary for the lots thereafter is this river in its de facto location or the erroneous registered depiction thereof?
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(DOES I through V) claiming any right, title, estate,
lien or interest in the real property described
in the complaint adverse to Respondents' ownership,
or any cloud upon Respondents' title thereto,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioners Gregorio D. Taitague and Henry Blas Blas respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled proceeding on September 3, 1991.

OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit has not been reported. It is reprinted in the appendix hereto, p. A-1.

The opinion of the District Court of Guam, Appellate Division has not been reported. It is reprinted in the appendix hereto, p. B-1.

The decision of the Superior Court of Guam has not been reported. It is reprinted in the appendix hereto, p. C-1.

JURISDICTION

The Superior Court of Guam issued its Decision and Order on May 25, 1988 dismissing Petitioners' complaint. The trial court denied a timely motion for additional findings and to amend findings on July 12, 1988. On January 28, 1990, the District Court of Guam Appellate Division, affirmed the trial court's decision. On September 3, 1991 the Ninth Circuit Court of Appeals affirmed the Appellate Division. The Court of Appeals denied a timely petition for rehearing on September 26, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

Fourteenth Amendment, United States Constitution, § 1

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

48 USC § 1421b. Organic Act of Guam

...

(e) No person shall be deprived of life, liberty, or property without due process of law.

...

(u) The following provisions of and amendments to the Constitution of the United States are hereby extended to Guam to the extent that they have not been previously extended to that territory and shall have the same force and effect there as in the United States or in any State of the United States: article I, section 9, clauses 2 and 3; article IV, section 1 and section 2, clause 1; the first to ninth amendments inclusive; the thirteenth amendment; the second sentence of section 1 of the fourteenth amendment; and the fifteenth and nineteenth amendments.

Civil Code of Guam

§ 1157.44. Limitation of action relating to land. No person shall commence any action at law or in equity for the recovery of land, or assert any interest or right in or lien or demand upon the same, or make entry thereon adversely to the title of interest certified in the certificate of title bringing the land under the operation of this Act after one (1) year following the first registration, providing said first registration is not void for any of the reasons set forth in § 37 of this Act. It shall not be an exception to this rule that the person entitled to bring the action or make the entry is deceased, an infant, lunatic, or is under any disability, but action may be brought by such person by his next friend or guardian or by the administrator or the executor of a deceased person. It shall be the duty of the guardian, if there is any, to bring action in the name of his ward whenever it is necessary to preserve or enforce the ward's rights in registered land; provided, however, before such action shall proceed, it must be made to appear to the court that the person bringing such action or those under whom he claims, had not actual notice of the proceedings to register such lands in time to appear

and file his objections or assert his claim. The provisions of this section shall in no way affect or disturb the rights of any person in said land acquired subsequent to the registration thereof, bona fide and without knowledge and for a valuable consideration.

§ 1157.37. Effect of registration where deed void or executed by person under disability. If a deed or other instrument is registered, which is forged, or executed by a person under legal disability, such registration shall be void; provided, that the title of a registered owner, who has taken bona fide for a valuable consideration, shall not be affected by reason of his claiming title through someone, the registration of whose right or interest was void, as provided in this section.

STATEMENT OF THE CASE

Petitioners' predecessor in interest Baldovino Taitague (hereafter Taitague)¹ initiated this action in the Superior Court of Guam on February 23, 1979 to quiet title to a portion of property he had owned and lived on since at least the 1930's. The portion of his land which he sought to quiet title to was that which was bounded by a river (the Ugum River) which had served as the boundary between his property and Respondents' property.

In 1964 predecessors to Respondent Martinez, Pedro and Maria Martinez (hereinafter Martinez), filed an action under Guam's Land Title Registration Act to have their property registered. This statute required that inter alia the petition seeking to register property identify the names of all adjacent land owners to that property and to personally serve all such land owners with a copy of the petition. Taitague, although unquestionably an adjacent land owner, was not designated as such by Martinez in their registration petition, nor was he personally served with a

¹Baldovino Taitague was the original petitioner while this matter was still before the trial court. Gregorio Taitague and Henry Blas Blas, Baldovino's son and grandson and successors in interest to the Taitague property were substituted as plaintiffs.

copy of that petition. The decree registering Martinez' property was entered in 1964. The property map registered by Martinez identified the Ugum river as their northern boundary. However that map depicted the course of that river as traversing over a portion of Taitague's property such as to deprive Taitague of approximately 64,000 square meters of property. This was the property for which Taitague initiated this action to quiet title: that is that portion of his property between the actual location of the river and the erroneous depiction of same. Respondents raised as an affirmative defense to this quiet title action the fact that the subject property had been registered and they were subsequent innocent purchasers for value of same and were therefore protected by relevant portions of the registration statute.

The Superior Court of Guam after trial summarized the facts of that matter as follows (see pp. C-2, 3, *infra*):

This boundary dispute has as its origin Land Registration Case No. 32-64 (of which the Court takes judicial notice) in which Pedro and Maria T. Martinez petitioned the Island Court of Guam for the initial registration of title to one parcel of land designated as Estate 16 Lot "B" Dandan, Municipality of Inarajan, Territory of Guam. [In that action, the petitioners] did not list in their petition [nor] personally serve the plaintiffs' predecessor in interest, Baldovino Babauta Taitague, as an occupier of land and adjacent landowner pursuant to Guam Civil Code §§ 1157.4 and 1157.11. (Land Title Registration Act). Further, [the 1964 Untalan] survey map relied upon in Land Registration Case No. 32-64 incorrectly depicted the course of the Ugum River which had traditionally established the boundary between the Taitague and Martinez properties. [The disputed property in which the plaintiffs seek to quiet title is thus a portion of what had traditionally been considered the Taitague family estate lying just north of the Ugum River in the municipality of Talofofo. T]he largely uncontradicted testimony put forth by plaintiffs establishes that they have been in possession of the disputed property since the late 1930's. The Taitagues have maintained houses on the property as well as various farming activities. The Martinezes, prior to 1964, had

never made a claim to this property and, in fact, had constructed a fence on the opposite side of the Ugum River from the Taitague land for the purpose of holding cattle . . .

The property registered by Pedro and Maria T. Martinez in Land Registration Case No. 32-64 was subsequently sold in January of 1972 to James S. Lee & Co. (Guam) Ltd. and Calvo Finance Corporation. In 1974 James S. Lee & Co. (Guam) Ltd. sold its one-half undivided interest in the property to First Island Industry, Inc. Finally, in August of 1980, First Island Industry, Inc., transferred its interest to Oxford Properties and Finance Ltd. [All transfers of the Martinez property were made to bona fide purchasers and for value.] Each of the above grantees received a new Certificate of Title upon purchase of their respective interest. Thus, the Certificate of Title issued to Pedro and Maria T. Martinez, upon which plaintiffs premise their present suit, was canceled in 1974 upon transfer of the property to James S. Lee & Company and Calvo Finance Corporation. (Bracketed alterations supplied by appellate division decision at B-2, 3)

This recitation of facts was adopted and provided verbatim in the decisions of the District Court of Guam, Appellate Division and the Ninth Circuit. (See B-2, 3 and A-3, 4)

The Superior Court of Guam dismissed Petitioner's complaint holding as follows (see p. C-4, *infra*):

Because the present case involves subsequent innocent purchasers for value, *Follette* will not be applied to permit "reopening of the question of the validity of the registration." Accordingly, the Certificate of Title currently possessed by defendants Calvo's Insurance Underwriters, Inc., and Oxford Properties and Finance, Ltd., is held to be immune from the claims the Taitagues are prosecuting herein. The above constitutes findings of fact and conclusions of law as required by Rule 52(a) of the Guam Rules of Civil Procedure.

The Appellate Division affirmed the Superior Court's decision concurring that subsequent innocent purchasers for value precluded Petitioners' right to challenge the defective registration

even though Taitague had never been served with process in the original registration proceeding.

The Ninth Circuit affirmed the Appellate Division relying upon an "alternative legal basis" and held that Petitioners' claim was "time barred". Specifically, it held that Guam Civil Code § 1157.44 provided for a one year period in which to challenge a defective registration except where that registration was void for specified reasons. If the registration was void for one of the specified reasons then there would be no time limitation in which to challenge that registration. However it further held that this statute did not designate the failure to serve the statutorily required process as a recognized grounds to render the judgment of registration void. Therefore it concluded that Taitague was required to have challenged that judgment within one year of its rendition and having failed to do so his quiet title action was time barred.

REASONS FOR GRANTING THE WRIT

I

THE NINTH CIRCUIT'S DECISION DIRECTLY CONFLICTS WITH DECISIONS OF THIS COURT.

The Ninth Circuit has directly violated in principle the holdings of this Court in *Hollingsworth v. Barbour, et al.*, 4 Pet. 466, 29 U.S. 922, (1830); *Penoyer v. Neff*, 5 Otto (95 US) 714, (1877); *Shephard v. Pepper*, 133 U.S. 626, (1890); *Shaffer v. Heitner*, 433 U.S. 186, (1977); *Armstrong v. Manzo*, 380 U.S. 545, (1965) and their progeny. It did so by holding that a judgment entered without a statutorily required summons ever having been issued to Petitioners' predecessor in interest or served upon him could be used to deprive him and thus them of their title to a substantial amount of real property. In reaching this conclusion, the Ninth Circuit held as follows (see p. A-7, *infra*):

Taitague and Blas argue that the one-year statute of limitations set forth in the Act does not apply because the failure of defendants' predecessor in interest to serve notice on Baldovino Taitague in the original registration proceeding

rendered the registration void. However, the Act does not specify that mistake in description or failure to provide notice to an adjacent land owner are bases for voiding a registration. One provision of the Act preserves the rights and remedies of a *defrauded* party, but even that provision also notes that an action for fraud cannot "affect the title of a registered owner who has taken bona fide for a valuable consideration or of any person bona fide claiming through or under him." Guam Civ. Code § 1157.36 (21 Guam Code Ann. § 29138). *Nothing in the Act authorizes a party who did not receive the required notice at the time of original registration, such as Taitague, to bring an action against a subsequent good faith purchaser to void the registration. More importantly, the statute of limitations does not contain any exception for such an action.* (Emphasis added)²

²Curiously, the Ninth Circuit's holding was alleged to have been based on an "alternative legal basis" to that relied upon by the trial court and the intermediate appellate court. Both of those courts held that Petitioner's rights had been cut off by the rights of intervening bona fide purchasers for value. This conclusion was in direct conflict with the dispositive authority on this issue under local Guam law. Specifically, the Supreme Court of California's, *Follette v. Pacific Light & Power Corp.*, 189 Cal. 193, 208 P. 295 (1922) decision. This decision is dispositive under Guam law because the subject land registration statute was adopted verbatim from California circa 1933. By operation of the Ninth Circuit's *Roberto v. Aguon*, 519 F.2d 754 (9th Cir., 1975), decision, statutes adopted from California by Guam are deemed to have been adopted as construed by the highest court of that state. In *Follette, supra*, the Supreme Court of California considered the issue of whether the rights of a subsequent bona fide purchaser of registered land cut off those of an affected land owner statutorily entitled to receive service of process but who had never been personally served in the original registration action. That court held that notice and opportunity to be heard is so fundamental to our concept of justice, tracing its origins back to the Magna Carta, that subsequent bona fide purchasers to registered property did not terminate the ability of effected land owners to challenge defective registrations where they had not properly been made parties by service of process in the original proceedings.

The holding of *Hollingsworth, supra*, *Penoyer, supra*, *Shepherd, supra* and *Shaffer, supra*, *Armstrong, supra*, and their progeny all stand for the axiomatic principle of constitutional law that a judgment entered without furnishing a party with the statutorily required service of process is void and that no effect may be given to such a judgment. In contravention of this principle, the Ninth Circuit held that because Guam's land registration limitation statute did not expressly exclude from its operation a judgment which was void for want of service of process that such a judgment was valid thereby rendering operational a one year limitation period within which to challenge that judgment. In short, the Ninth Circuit held that a judgment which was void for having failed to meet constitutionally mandated due process requirements was not void because it did not meet the local statute's definition of a void judgment!

Furthermore this decision unconstitutionally purports to allow such a void judgment to effect or impair rights. This it accomplished by burdening a party against whom a void judgment has been entered with the obligation to initiate an action at law or equity to set aside that judgment within one year of the entry of same or be precluded from challenging that Judgment. A party would apparently have that burden—where, as here, he never received any knowledge within this year period of the fact that he had been disenfranchised by a void Judgment!³ Furthermore this

The term "curious" is used in this context because the limitation statute relied upon by the Ninth Circuit (G.C.C. § 1157.44) literally applied has the same effect as the two lower courts' holding. This is so because the literal interpretation of this statute in the portion of the decision above provided and emphasized is that the one year limitation period is terminated if the rights of an innocent bona fide purchaser intervened. Therefore, it is "curious" that this alternative basis for its holding was deemed necessary to be used when it indicated that the original basis used by the lower courts was not constitutionally deficient and would have effected the identical result.

³The subject statute does not literally allow for the application of the equitable tolling doctrine. However the Ninth Circuit indicates in dicta that the equitable tolling doctrine could be applied to this statute. However even if this statute were to be so construed this would not

limitation statute by requiring the party against whom the void judgment has been entered to file a separate action in law or equity effectively shifts to that party both the burden of proof and persuasion which is also constitutionally impermissible. *See, Armstrong v. Manzo, supra.*

An alternative defect of this decision is that it purports to permit a limitation statute to compel a resort to legal proceedings by one who is in complete enjoyment of all he claims. Specifically, limitation statutes may not require one in undisturbed possession of real property to bring an action within a specified period of time or thereby be deemed to have forfeited that property. *See, Konantz v. Stein*, 283 Min. 33, 167 NW2d 1, (1969); *Burton v. Martin Oil Service Inc.*, 295 F.2d 679, (1961); *Kupka v. Reid*, 50 Wa.2d 465, 312 P.2d 1056, (1957); *Murrison v. Fenstermacher*, 166 Kan. 568, 203 P.2d 160, (1949); *Tannhauser v. Adams*, 31 C.2d 169, 187 P.2d 716, (1947); *Buty v. Goldfinch*, 74 Wash. 532, 133 P. 1057, (1913); *State, ex rel Douglas v. Westfall*, 85 Minn. 437, 89 NW 175, (1902); *People, ex rel Deneen v. Simon*, 176 Ill. 165, 52 NE 910, (1898); *Groesbeck v. Seeley*, 13 Mich. 329, (1865); 51 AmJur2d *Limitations of Actions* § 30; 61 *Corpus Juris Taxation* § 2031; 85 *Corpus Juris Secundum Taxation* § 984(d); 7 ALR2d 1366-1373 *Constitutionality of Statute Which Regardless of Possession of the Owner Reduces Title to Real Estate to a Mere Right of Action to be Asserted Within a Prescribed Period of Time*; 2 Cooley, *Constitutional Limitations* (8th ed. 1927) 762-763.⁴

improve the constitutional vitality of this decision since it would be attempting to supplant the statutory required personal notice with "extra-official or casual notice". *See, Coe v. Armour Fertilizer Works*, 237 U.S. 413, (1914).

⁴This Court has visited this issue only once in *Lettingwall v. Warren* 2 Black 599, 17 L. Ed. 261 (1862) and upheld a Wisconsin decision containing a statute which directly contradicted this principle. *See, Hill v. Kracka*, 11 Wis 447 (1860). However it must be noted that both of these decisions were rendered before the adoption of the 14th Amendment.

II

THE NINTH CIRCUIT'S DECISION IS EXTREMELY IMPORTANT TO ALL RESIDENTS AND PARTICULARLY UNREGISTERED LAND OWNERS IN THE TERRITORY OF GUAM.

This Ninth Circuit decision has inherent significance requiring its reversal in that it countenances a most flagrant and egregious deprivation of constitutional rights in direct contravention of numerous and unequivocal pronouncements of this Court. Furthermore, this decision, because it countenances this extreme sort of deprivation, places in jeopardy all rights of landowners of unregistered property in the Territory of Guam or subjects them to excessive burdens. This conclusion follows from the fact that this decision permits property to be registered without the giving of statutorily required notice to effected land owners. Therefore, any and all owners of unregistered land in the Territory of Guam are at risk of having their property registered to another without being made a party to that action. In essence, all owners of unregistered land are at risk of having their property taken from them through the auspices of a judicial proceeding in which they would not participate. Their only remedy would be to file an action at law or equity to challenge this taking within one year of this judgment arguably only so long as the rights of a subsequent bona fide purchaser had not intervened⁵. This would be the case even where they remained in full possession and enjoyment of their property. This decision therefore could have an extremely disturbing effect on the Territory's land tenure system in that it would likely depreciate the value of all unregistered lands as well as sound the bell for the commencement of a rush to the courthouse by every sort of unscrupulous person to seek to effect a judicially aided theft of land.

Lastly, this decision could effect similar results in other jurisdictions which have adopted a Land Title Registration Act

⁵.Although the Ninth Circuit did not address this issue it indicated in the text of its decision reprinted and highlighted herein at pp. 7, 8 that the right to challenge such a void registration within the one year period would be terminated by a subsequent bona fide purchaser.

containing a limitation section similar to that found in Guam's. Immediately it could effect any other jurisdiction within the Ninth Circuit which have adopted such a statute containing a similar limitation section.

III

PROPER RESOLUTION OF LOCAL LAW ISSUE ELIMINATES NEED TO ADDRESS CONSTITUTIONAL ISSUES.

It is submitted that an appropriate ruling on an issue controlled exclusively by local law eliminates the need to resolve the constitutional issues herein presented. *Communist Party of the United States v. Subversive Activities Control Board*, 351 U.S. 115, (1956); *Railroad Com. of Texas v. Pullman Co.*, 312 U.S. 496, (1941).

The trial court found and all appellate courts thereafter affirmed that the traditional boundary between the petitioners and respondents' property was the Ugum River. The controversy arose because in the initial registration the meander line depicting the course of that river was inaccurate. It is submitted that under local statutory law the boundary would still remain the river in its de facto location and not the meander line inaccurately depicting the course of that river.

Guam Civil Code § 830 provides as follows:

Section 830. Boundaries by water. Except where the grant under which the land is held indicates a different intent, the owner of the upland, when it borders on tide water, takes to ordinary high water mark; when it borders upon a navigable stream, where there is no tide, the owner takes to the edge of the stream, at low water mark; when it borders upon any other water, the owner takes to the middle of the stream.

This statute establishes that the boundary of real property when it is bordered by a waterway is the waterway itself.

It is a well established principle of the law of boundaries that where there is a disparity between the numerical designation of the location of a natural monument and the monument itself, the

monument controls. *County of St. Clair v. Lovington*, 90 U.S. 59, 23 Wall 46 (1874); *Freeman v. Bellegardi*, 108 Cal.179, 41 P. 289 (1898); *Heckman v. Swett*, 99 Cal. 303, 33 P. 1099 (1893); *Martin v. Cooper*, 87 Cal. 97, 25 P. 262 (1890).

CONCLUSION

For the above-specified reasons it is respectfully submitted that this petition for certiorari should be granted.

Respectfully submitted,

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Counsel for Petitioners

December 20, 1991



A-1

Appendix A

Not For Publication

United States Court Of Appeals

For The Ninth Circuit

**GREGORIO D. TAITAGUE and
HENRY BLAS BLAS,**

Plaintiffs-Appellants,

vs.

**FIRST ISLAND INDUSTRY, Inc., a Guam Corporation;
CALVO'S INSURANCE UNDERWRITERS, INC., a Guam
Corporation; OXFORD PROPERTIES AND FINANCE,
LTD., a Hong Kong Corporation; The Estate of MARIA
TORRES MARTINEZ Deceased, by Father VICENTE T.
MARTINEZ, Administrator; and all other persons unknown
(DOES I through V) claiming any right, title, estate, lien or
interest in the real property described in the complaint adverse
to Plaintiffs' ownership, or any cloud upon Plaintiffs' title
thereto, Defendants-Appellees.**

No. 90-15217

D.C. No. CV-88-00047-CCD

MEMORANDUM*

**Appeal from the Appellate Division of the United States
District Court for the District of Guam
Duenas, Munson, and McDonald, District Judges, Presiding**

**Argued and Submitted May 10, 1991
Honolulu, Hawaii**

**Before: SCHROEDER, FLETCHER and FERGUSON,
Circuit Judges.**

**Plaintiffs-appellants Gregorio D. Taitague and Henry Blas Blas
appeal the affirmance by the appellate division of the United**

***This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as**

States district court of Guam of the Superior Court of Guam's judgment against them in an action to quiet title arising from a boundary dispute. They contend that the appellate division erred in finding that their suit was barred under Guam's land registration law. We have jurisdiction under 48 U.S.C. § 1424-3(c). We affirm.

FACTS

This case concerns a dispute over the legal boundary between the property of the appellants and the appellees. It is uncontested that the Martinez property has been registered under Guam's Torrens Land Title Registration System since 1964. The Taitague property has never been registered, although the appellants have held record title to the land since 1936.

The parties all agree with the findings of fact prepared by the Superior Court of Guam and adopted by the appellate division as the basis for its decision. These facts are as follows:

The boundary dispute has as its origin Land Registration Case No. 32-64 (of which the Court takes judicial notice) in which Pedro and Maria T. Martinez petitioned the Island Court of Guam for the initial registration of title to one parcel of land designated as Estate 16 Lot "B" Dandan, Municipality of Inarajan, Territory of Guam. [In that action, the petitioners] did not list in their petition [nor] personally serve the plaintiffs' predecessor in interest, Baldovino Babauta Taitague, as an occupier of land and adjacent landowner pursuant to Guam Civil Code §§ 1157.4 and 1157.11. (Land Title Registration Act). Further, [the 1964 Untalan] survey map relied upon in Land Registration Case No. 32-64 incorrectly depicted the course of the Ugum River which has traditionally established the boundary between the Taitague and Martinez properties. [The disputed property in which the plaintiffs seek to quiet title is thus a portion of what had traditionally been considered the Taitague family estate lying just north of the Ugum River in the municipality of Talofofo. T]he largely uncontradicted testimony put forth by plaintiffs establishes that they have been in possession of

the disputed property since the late 1930's. The Taitagues have maintained houses on the property as well as various farming activities. The Martinezes, prior to 1964, had never made a claim to this property and, in fact, had constructed a fence on the opposite side of the Ugum River from the Taitague land for the purpose of holding cattle

The property registered by Pedro and Maria T. Martinez in Land Registration Case No. 32-64 was subsequently sold in January of 1972 to James S. Lee & Co. (Guam) Ltd. and Calvo Finance Corporation. In 1974 James S. Lee & Co. (Guam) Ltd. sold its one-half undivided interest in the property to First Island Industry, Inc. Finally, in August of 1980, First Island Industry, Inc., transferred its interest to Oxford Properties and Finance Ltd. [All transfers of the Martinez property were made to bona fide purchasers and for value.] Each of the above grantees received a new Certificate of Title upon purchase of their respective interest. Thus, the Certificate of Title issued to Pedro and Maria T. Martinez, upon which plaintiffs premise their present suit, was canceled in 1974 upon transfer of the property to James S. Lee & Company and Calvo Finance Corporation.¹

Superior Court of Guam, Decision and Order entered May 25, 1988, at 1-3 (bracketed alterations supplied by appellate division).

This action was originally instituted by the appellants' predecessor in interest, Baldovino Taitague, to quiet title to Lot 412, Municipal District of Talofoto, a portion of which is included within the bounds of Estate 16, Lot "B" Dandan. While the case was still before the trial court, Gregorio Taitague and Henry Blas Blas, Baldovino Taitague's son and grandson and successors in interest to the Taitague property, were substituted as plaintiffs. In

¹We note that the court's statement of facts contains an immaterial discrepancy. The court first states that the Martinezes sold the property in 1972 to James Lee & Co. and Calvo Finance Corp., but the last sentence of the quoted passage indicates the sale occurred in 1974. Whatever the correct date of the sale, it has no bearing on our decision in this appeal.

May 1988, the Superior Court of Guam found in favor of the defendants.

Taitague and Blas filed a motion asking the court to amend its findings to further clarify the proper boundary line between their property and that of the defendants. The court denied that motion. On Appeal to the Appellate Division of the United States District Court for the District of Guam, Taitague and Blas contended that the trial court had erred in its refusal to quiet title in the plaintiffs and in denying their motion for amendment of the judgment. The appellate division affirmed. Taitague and Blas timely appeal.

STANDARD OF REVIEW

We review questions of law *de novo*, according "no deference to interpretations of local law by the Appellate Division of the District Court of Guam." *Guam v. Yang*, 850 F.2d 507, 511 (9th Cir. 1988) (en banc). A ruling on a motion to amend the judgment is reviewed for abuse of discretion. *Tranago, Inc. v. Ajac Transmission Parts Corp.*, 768 F.2d 1001, 1014 (9th Cir. 1985), *cert. denied*, 474 U.S. 1059 (1986).

DISCUSSION

The dispute arises from an error in the survey map relied upon by the Martinezes in their original land registration petition. The boundary between the Martinez property and the Taitague property had been assumed to be the Ugum River. The Superior Court explicitly found that "it is evident that the course of the Ugum River as depicted on the 1964 Untalan survey map is incorrect." Because of this error, the description of the Martinez property included a portion of what had been assumed to be Taitague property. It is undisputed that the Martinezes did not serve notice on Baldovino Taitague of their land registration action as required by Guam Civil Code § 1157.11.

In 1933, Guam adopted the Land Title Registration Act establishing a Torrens title system for the territory. *Wells v. Lizama*, 396 F.2d 877, 877-78 (9th Cir. 1968). A Torrens title system is defined as:

A system for registration of land under which, upon the landowner's application, the court may, after appropriate proceedings, direct the issuance of a certificate of title. With exceptions, this certificate is conclusive as to applicant's estate in land.

Black's Law Dictionary (6th ed. 1990).

"[T]he right of a claimant in possession of the land is protected under most land title acts so far as the initial registration of the title is concerned unless he is given actual notice of the application and an opportunity to present his claim." *Wells*, 396 F.2d at 882 (quoting Annotation, 42 A.L.R.2d 1387, 1389 (1955)). If the Martinezes still owned the property, the error conceivably could be corrected, based on their failure to give notice to Baldovino Taitague of their land registration case as legally required. However, two subsequent transfers of the property have taken place since the original certificate of title was issued.

The Guam Land Registration Act is specifically designed to provide broad protection to subsequent bona fide purchasers for value. For example, a good faith subsequent purchaser is not required to look into the circumstances of the original, or previous, registration, or to have any notice, actual or constructive, of any adverse interest or claim. Guam Civ. Code § 1157.35 (now 21 Guam Code Ann. § 29137 (1989)). A subsequent bona fide purchaser for value holds her title against claims of fraud in the original registration or against claims that any previous registration was void. Guam Civ. Code §§ 1157.36, 1157.37 (21 Guam Code Ann. §§ 29138, 29139). The Act also provides that no unregistered owner shall prevail in a claim against the title of a registered owner who bona fide purchased the property for value. Guam Civ. Code § 1157.38 (21 Guam Code Ann. § 29140). Finally, once land has been registered and a certificate of title issued, no one may claim possession of the land by adverse possession. Guam Civ. Code § 1157.34 (21 Guam Code Ann. § 39136).

Taitague and Blas contend that the California Supreme Court's decision in *Follette v. Pacific Light & Power Corp.*, 189 Cal. 193, 208 P. 295 (1922), creates an exception to this otherwise impenetrable title of a subsequent bona fide purchaser for value. We need

not decide this issue, however, because we conclude that their claim is time barred. *See Golden Nugget, Inc. v. American Stock Exchange, Inc.*, 828 F.2d 586, 590 (9th Cir. 1987) (court of appeals may affirm on alternative legal basis adequately supported in record).

Although Baldovino Taitague did not receive notice of the conflicting land claim at the time of original registration in 1964, he received actual notice of the conflicting claim at least as early as October 1975, when he obtained the results of a survey of his property that he himself had authorized. The map produced by this survey, signed and dated by Baldovino Taitague in October 1975,² clearly shows a large portion of Taitague's property on his side of the Ugum River as included in Lot "B" Dandan, the lot registered to Martinez. In addition, a "SPECIAL NOTES" section on the map states that " 'PORTIONS OF LOT 412 [Taitague's property] WITHIN LOT B DANDAN' ARE SEPARATELY DESIGNATED TO INDICATE THAT THERE WERE ERRONEOUSLY INCLUDED WITHIN LOT NO 'B' WHEN IT WAS REGISTERED"

Under Guam's Land Title Registration Act, the limitations period is "one (1) year following the first registration, providing said first registration is not void for any of the reasons set forth in § 37 of this Act." Guam Civ. Code § 1157.44 (now 21 Guam Code Ann. § 29146 (1989)). Section 37 provides that registrations that have been forged or executed by a person under legal disability are void. Guam Civ. Code § 1157.37 (21 Guam Code Ann. § 29139). Section 37 does not apply in the present case.

Taitague and Blas argue that the one-year statute of limitations set forth in the Act does not apply because the failure of defendants' predecessor in interest to serve notice on Baldovino Taitague in the original registration proceeding rendered the registration void. However, the Act does not specify that mistake

²Though the date and Taitague's signature on the map are not discernible on the copy of the map in the record furnished to us, the surveyor who prepared the map did sign and date it October 1975. Appellants have not disputed the claim of First Island Industry that Taitague authorized the survey and signed the map.

in description or failure to provide notice to an adjacent landowner are bases for voiding a registration. One provision of the Act preserves the rights and remedies of a *defrauded* party, but even that provision also notes that an action for fraud cannot "affect the title of a registered owner who has taken bona fide for a valuable consideration or of any person bona fide claiming through or under him." Guam Civ. Code § 1157.36 (21 Guam Code Ann. § 29138). Nothing in the Act authorizes a party who did not receive the required notice at the time of original registration, such as Taitague, to bring an action against a subsequent good faith purchaser to void the registration. More importantly, the statute of limitations does not contain any exception for such an action.

We recognize that Torrens act title registrations in Guam and California³ have ~~not~~ been set aside where notice was not served on an affected party. *See Francisco v. Look*, 537 F.2d 379 (9th Cir. 1976) (Guam); *Follette v. Pacific Light & Power Corp.*, 189 Cal. 193, 208 P. 295 (1922); *Swartzbaugh v. Sargent*, 30 Cal. App. 2d 467, 86 P.2d 895 (Cal. Ct. App. 1939). However, the case before us is different. In each of the cited cases the aggrieved parties acted soon enough after receiving notice of the adverse registration decree that their claims were not barred by any statute of limitations. In this case, even if we were to hold that the statute of limitations could be tolled equitably until Taitague had actual or constructive notice of the adverse registration decree, Taitague's claim still would be time-barred. Taitague's receipt of the survey map showing the conflicting claim put him on notice at least as early as October 1975. Even were we to apply equitable tolling, the statute of limitations period would have commenced to run at that time. Taitague waited over three years to commence this action; the limitations period therefore expired well before he filed his complaint in February 1979.

The appellants also contend that the appellate division erred in affirming the Superior Court's denial of their motion for amend-

³California law is especially relevant because Guam's Land Title Registration Act essentially was adopted from California's land title registration law in 1933. *See Wells*, 396 F.2d at 881 n.3.

ment of the judgment. Their motion asked the court to find that the boundary between the two properties was the Ugum River rather than the line depicted on the land registration certificate. The appellate division correctly found that Taitague and Blas were trying to achieve the same result they sought in their quiet title action through different means. We agree with the appellate division that the Superior Court did not abuse its discretion in denying the motion to amend.

AFFIRMED.

Appendix B

**IN THE DISTRICT COURT OF GUAM
TERRITORY OF GUAM
APPELLATE DIVISION**

Gregorio D. Taitague, et al.,
Plaintiffs/Appellants,

v.

First Island Industry Inc., et al.,
Defendants/Appellees.

[Filed January 28, 1990]
Civil Case No. 88-00047A
S.C. Civ. Case No. 0130-79

OPINION

Attorney for Appellants:	Paul A. Lawlor Moore, Ching, Boertzel & Lawlor Suite 400, GCIC Building 414 West Soledad Avenue Agana, Guam 96910
Attorney for Appellee: First Island Industry Inc.:	Anita Arriola Arriola, Cowan & Bordello P.O. Box X Agana, Guam 96910
Attorney for Appellee: Calve's Insurance Underwriters, Inc.:	Lawrence J. Taker Gayle & Teker Second Floor Agana Bay Building 220 East Marine Drive Agana, Guam 96910
Attorney for Appellee: Oxford Properties and Finance Co., Ltd.:	Douglas F. Cushnie P.O. Bos 949 Saipan, MD 96950

BEFORE: DORMAS, Senior Judge,
MUNSON¹ and McDONALD², District Judges

McDonald, District Judge:

The plaintiffs appeal from a proceeding in which they unsuccessfully sought to have title to Lot 412, Municipal District of Talofofo, quieted in their name. Finding no error, we affirm.

I.

The factual findings of the trial court, which are controverted by neither the appellants nor the appellees, aptly set forth the facts as are relevant to this appeal, and accordingly are adopted as our own:

This boundary dispute has as its origin Land Registration Case No. 32-64 (of which the Court takes judicial notice) in which Pedro and Maria T. Martinez petitioned the Island Court of Guam for the initial registration of title to one parcel of land designated as (Estate) is Lot "B" Dandan, Municipality of Inarajan, Territory of Guam. [In that action, the petitioners] did not list in their petition [nor] personally serve the plaintiffs' predecessor in interest, Baldovino Babanta Taitague, as an occupier of land and adjacent landowner pursuant to Guam Civil Code §§ 1187.d and 1157.11. (Land Title Registration Act). Further, [the 1964 Untalan] survey map relied upon in Land Registration Case No. 33-64 incorrectly depicted the course of the Ugum River which had traditionally established the boundary between the Taitague and Martinez properties. [The (disputed) property in which the plaintiffs seek to quiet title is thus a portion of what had traditionally been considered the Taitague family estate lying just north of the Ugum River in the Municipality of Talofofo. The largely uncontradicted testimony put forth by plaintiffs

¹The Honorable Alex R. Munson, United States District Court for the Northern Mariana Islands, sitting by designation.

²The Honorable Alan A. McDonald, United States District Court for the Eastern District of Washington, sitting by designation.

establishes that they have been in possession of the disputed property since the late 1930's. The Taitagues have maintained houses on the property as well as various farming activities. The Martinezes, prior to 1964, had never made a claim to this property and, in fact, had constructed a fence on the opposite side of the Ugum River from the Taitague land for the purpose of holding cattle . . .

The property registered by Pedro and Maria T. Martinez in Land Registration Case No. 32-64 was subsequently sold in January of 1972 to James S. Lee & Co. (Guam) Ltd. and Calvo Finance Corporation. In 1974 James S. Lee & Co. (Guam) Ltd. sold its one-half undivided interest in the property to First Island Industry, Inc. Finally, in August of 1980, First Island Industry, Inc. transferred its interest to Oxford Properties and Finance Ltd. [All transfers of the Martinez property were made to bona fide purchasers and for value.] Each of the above grantees received a new Certificate of Title upon purchase of their respective interests. Thus, the Certificate of Title issued to Pedro and Maria T. Martinez, upon which plaintiffs promise their present suit, was cancelled in 1974 upon transfer of the property to James S. Lee & Company and Calvo Finance Corporation.

Decision and Order entered May 25, 1988 (95) 1-3.

The present action was commenced on February 23, 1979 by the plaintiffs-appellants' predecessor in interest, Baldovino Taitague, to quiet title to Lot 412, Municipal District of Talofofo, a portion of which is included within the bounds of Estate 16, Lot "B" Bandan. Named as defendants were First Island Industry, Inc., Calvo's Insurance Underwriters, Inc.; Oxford Properties and Finance, Ltd.; the Estate of Maria Torres Martinez; and all other persons unknown. At some later point in the proceedings, Gregorio Taitague and Henry Blas Blas, Baldovino Taitague's son and grandson and successors in interest to the Taitague property, were substituted as plaintiffs.

The action was tried before the court on May 17 and 18, 1988. By a Decision and Order entered May 25, 1988, the trial court held in favor of the defendants. On June 13, 1988, the plaintiffs

filed a Motion to Amend or to Make Additional Findings to the court's May 25, 1988 Decision and Order, in which they sought further clarification of the proper boundary line between the plaintiffs' and the defendants-in-possession's property. The trial court declined to amend its original Decision and Order, or to make any additional findings thereto, by a Decision and Order entered July 12, 1988. A final Judgment was then entered on August 8, 1988.

II.

Viewing the appellants' argument as a whole, we find before us two broad issues for review. First, we must determine whether the trial court erred in returning to quiet title to Lot 412 in the name of the appellants where the appellants' predecessor was neither made a party to nor served with notice in the original Estate 16, Lot "B" registration action, but where the disputed portion of Lot 412 is registered in the name of subsequent bona fide purchasers for value. And second, we must determine whether the trial court erred in declining to amend or to make additional findings to its original Decision and Order as to the proper boundary line between the appellants' claimed property and the appellees' registered property. As we regard both of these issues as issues of law, we review each *de nove*. *In re Brown*, 743 F.2d 664 (9th Cir. 1964).

A.

Under Guam's Land Title Registration Act, a properly issued certificate of title in the name of a subsequent bona fide purchaser for value is irrebuttably presumed to be evidence of ownership; *see, e.g.*, Guam Civ. Code § 1157.36 ("nothing contained in this section shall affect the title of a registered owner who has taken bona fide for a valuable consideration or of any person bona fide claiming through or under him"); § 1157.37 ("the title of the registered owner, who has taken bona fide for a valuable consideration, shall not be affected by reason of his claiming title through someone, the registration of whose right of interest was void"); § 1157.38 ("No unregistered estate . . . shall prevail against the

title of a registered owner taking bona fide for a valuable consideration or of any person bona fide claiming through or under him"); § 1157.40 ("In any action or proceeding brought for . . . possession of land, the certificate shall be held in every court to be conclusive evidence . . . that such registered owner has a good and valid title to the land"). *Nelle v. Lisage*, 396 F.2d 877 (9th Cir. 1969). Thus:

Although the right of a claimant in possession of the land is protected under most land title note so far as the initial registration of the title is concerned unless he is given actual notice of the application and an opportunity to present his claim, a purchaser for value and in good faith may acquire a good title in reliance upon the certificate of title regardless of the fact that someone in actual possession of the land may present an adverse claim.

Nelle, 396 F.2d at 282 (quoting 42 A.L.R. 2d 1287, 1389 (1955)). Such an interpretation of the Registration Act is essential if its ultimate purpose is to be fulfilled, which is "to establish an indefeasible title free from any and all rights or claims not registered with the registrar of titles, . . . to the and that anyone may deal with such property with the assurance that the only rights or claims of which he need take notice are those registered." *United States v. Byan*, 124 F.Supp 1, § (B. Minn. 1964) (interpreting Minnesota's Registration Act). As the trial court found the appellees named as the registered owners of the disputed property to be subsequent bona fide purchasers for value, it is committed no error in denying title in Lot 412 in the appellants.

B.

Rule 52(b) of the Rules of Civil Procedure for the Superior Court of Guam States in part that "[u]pon motion . . . the court may amend its findings or make additional findings and may amend the judgment accordingly." The appellants, in seeking additional findings, made no challenge to the sufficiency of the evidence used to support those findings already made. The trial court's decision whether to make additional findings or to recon-

sider was thus clearly a discretionary one, and accordingly is one which will not be overturned absent an abuse of discretion.

Upon review of the record, we find that the trial court, in its Decision and Order affected May 23, 1988, adequately addressed each of the contentions raised by the appellants in their complaint when it stated at 4-5 that "the Certificate of Title currently possessed by defendants Calvo's Insurance Underwriters, Inc., and Oxford Properties and Finance, Ltd., is held to be immune from the claims the Taitagues are prosecuting herein." Implicit in this holding was a finding that that portion of Lot 422 entitled to the appellees as the registered owners was that portion described in their certificates. The trial court committed no error in refusing to make additional findings in a decision which was complete on its face.

The same holds true when we view the appellants' action as a motion for reconsideration. While the appellants purported to acknowledge, in their words, the trial court's ruling "relative to the efficacy of the Torrens System," they effectively attempted to circumvent that decision by challenging, without presenting any new facts, the legal description of the land found in the appellees' certificates of title. This they cannot do. "A party who failed to prove his strongest case [at trial] is not entitled to a second opportunity by moving to amend a finding of fact or a conclusion of law." Wright & Miller, Federal Practice & Procedure: Civil § 2832 at 722 (1971). Here also we can find no error.

AFFIRMED.

CRISTOBAL C. DUEÑAS
Senior Judge

ALEX R. MUNSON
District Judge

ALAN A. McDONALD
District Judge

Appendix C

In The Superior Court Of Guam

Territory Of Guam

**GREGORIO D. TAITAGUE, and
HENRY BLAS BLAS,**

Plaintiffs,

vs.

**FIRST ISLAND INDUSTRY, Inc., a Guam
Corporation, CALVO'S INSURANCE
UNDERWRITERS, INC., a Guam Corporation,
OXFORD PROPERTIES AND FINANCE, LTD.,
a Hong Kong Corporation, The Estate of
MARIA TORRES MARTINEZ, deceased,
by FATHER VICENTE T. MARTINEZ,
Administrator, and all other persons
unknown (DOES I through V) claiming
any right, title, estate, lien or
interest in the real property
described in the complaint adverse to
plaintiffs' ownership, or any cloud
upon plaintiffs' title thereto,**

Defendants.

[Filed May 25, 1988]

DECISION AND ORDER

This action to quiet title came before the Court for trial on 17 and 18 May 1988. Paul A. Lawlor and Mikel W. Schwab appeared on behalf of plaintiffs Gregorio D. Taitague and Henry Blas Blas; Mark E. Cowan represented defendant First Island Industry, Inc.; Lawrence J. Teker represented defendant Calvo's Insurance Underwriters, Inc.; Douglas F. Cushnie represented defendant Oxford properties; and Fred E. Bordallo represented defendant Vicente T. Martinez, administrator for the estate of Maria T. Martinez.

This boundary dispute has as its origin Land Registration Case No. 32-64 (of which this Court takes judicial notice) in which Pedro and Maria T. Martinez petitioned the Island Court of Guam for the initial registration of title to one parcel of land designated as Estate 16 Lot "B" Dandan, Municipality of In-arajan, Territory of Guam. The plaintiffs allege that the petitioners in Land Registration Case No. 32-64 did not list in their petition and personally serve the plaintiffs' predecessor in interest, Baldovino Babauta Taitague, as an occupier of land and adjacent landowner pursuant to Guam Civil Code §§ 1157.4 and 1157.11. (Land Title Registration Act). Further, plaintiffs assert that the survey map relied upon in Land Registration Case No. 32-64 incorrectly depicted the course of the Ugum River which had traditionally established the boundary between the Taitague and Martinez properties. This error allegedly allowed Pedro and Maria T. Martinez to claim title to a substantial segment of the Taitague family estate located along the Ugum River in Talofolo. It is this segment of property along the Ugum River to which the plaintiffs presently seek to quiet title.

Based on the Court's viewing of the subject boundary and the testimony of land surveyor Thomas Anderson, it is evident that the course of the Ugum River as depicted on the 1964 Untalan survey map is incorrect. In addition, the largely uncontradicted testimony put forth by plaintiffs establishes that they have been in possession of the disputed property since the late 1930's. The Taitagues have maintained houses on the property as well as various farming activities. The Martinezes, prior to 1964, had never made a claim to this property and, in fact, had constructed a fence on the opposite side of the Ugum River from the Taitague land for the purpose of holding cattle. Finally, the petition filed in Land Registration Case No. 32-64 did not list Baldovino Taitague as either an occupant or adjacent landowner and the affidavits of service indicate that notice of the petition was not personally served on him.

The property registered by Pedro and Maria T. Martinez in Land Registration Case No. 32-64 was subsequently sold in January of 1972 to James S. Lee & Co. (Guam) Ltd. and Calvo Finance Corporation. In 1974 James S. Lee & Co. (Guam) Ltd.

sold its one-half undivided interest in the property to First Island Industry, Inc. Finally, in August of 1980, First Island Industry, Inc. transferred its interest to Oxford Properties and Finance Ltd. Each of the above grantees received a new Certificate of Title upon purchase of their respective interests. Thus, the Certificate of Title issued to Pedro and Maria T. Martinez, upon which plaintiffs premise their present suit, was cancelled in 1974 upon transfer of the property to James S. Lee & Company and Calvo Finance Corporation. *See*, Defendant's Exhibit A.

The defendants maintain that any potential defects in the initial registration proceeding cannot now be asserted against them since they are subsequent innocent purchasers for value of the initially registered property. Furthermore, the defendants argue that they are not relying on the initial Certificate of Title obtained by the Martinezes but, rather, on their own Certificates of Title issued to them upon the purchase of their respective interests in the property.

Plaintiffs argue, on the authority of *Follette v. Pacific Light & Power Corporation*, 189 Cal.193, 208 P. 295 (1922), that they may assert defects inherent in the initial title registration proceeding against the defendants in the present quiet title action. In *Follette*, the interest of an easement holder was omitted from an initial Torrens registration proceeding resulting in the issuance of a Certificate of Title which did not recognize the existence of the easement. The initial registrant sold the registered property to one Leo Gibbs who subsequently sold the property to the plaintiff Follette. Follette sued the holder of the easement in ejectment. The court held that as the easement holder had not received notice of the registration proceeding by personal service, the decree thereafter entered was obtained without due process of law. Further, the court held that the easement holder's possession of the registered property was constructive notice of his interest to subsequent purchasers of the property who relied on the original decree of registration.

The Ninth Circuit, in construing *Follette's* application to Guam, stated that:

Insofar as its effect on Guam Law is concerned, we take *Follette* as being limited to defects in an *original* Torrens Act

registration. Those jurisdictions which have passed upon the question have generally refused to extend the *Follette* principle to situations involving "subsequent" Torrens registrations (that is, registrations following one or more transfers of title).

Wells v. Lizama, 396 F.2d 877, 881 (9th Cir. 1968) (emphasis in original) (citations omitted). Having indicated in the above quoted material that *Follette's* application to Guam is to some degree "limited", the court further clarified its applicability in *Francisco v. Look*, 537 F.2d 379 (9th Cir. 1976). There the court stated that "[s]ince the instant case is an original Torrens Act registration, where no intervening innocent purchaser for value is involved, *Follette* is applicable to the extent that it permits reopening of the question of the validity of the registration." *Id.*, at 380. The converse of this statement must be accorded import. Thus, where an innocent purchaser for value has succeeded to the interest of the initial registrant, the *Follette* principle is not applicable.

Plaintiffs contend that the above quoted language from *Look* is merely "inartfully stated dicta." However, the finding by the Court in *Look* that there was not an intervening innocent purchaser for value was an essential premise to its application of the *Follette* principle. Hence, the above quoted language from *Look* is not merely dicta.

Because the present case involves subsequent innocent purchasers for value, *Follette* will not be applied to permit "reopening of the question of the validity of the registration." Accordingly, the Certificate of Title currently possessed by defendants Calvo's Insurance Underwriters, Inc., and Oxford Properties and Finance, Ltd., is held to be immune from the claims the Taitagues are prosecuting herein. The above constituted findings of fact and conclusions of law as required by Rule 52(a) of the Guam Rules of Civil Procedure.

SO ORDERED, this 25th day of May, 1988

JANET HEALY WEEKS

Janet Healy Weeks, Judge
Superior Court of Guam

Appendix D

United States Court Of Appeals
For The Ninth Circuit

GREGORIO D. TAITAGUE, and
HENRY BLAS BLAS,

Plaintiffs-Appellants,

vs.

FIRST ISLAND INDUSTRY, Inc., a Guam Corporation,
CALVO'S INSURANCE UNDERWRITERS, INC.,
a Guam Corporation,
OXFORD PROPERTIES AND FINANCE, LTD.,
a Hong Kong Corporation,
The Estate of MARIA TORRES MARTINEZ, deceased,
by FATHER VICENTE T. MARTINEZ,
Administrator, and all other persons
unknown (DOES I through V) claiming
any right, title, estate, lien or
interest in the real property
described in the complaint adverse to
Plaintiffs' ownership, or any cloud
upon Plaintiffs' title thereto,
Defendants-Appellees.

No. 90-15217

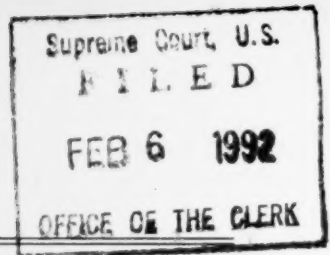
D.C No. CV-88-00047-CCD

ORDER

Before: SCHROEDER, FLETCHER AND FERGUSON,
Circuit Judges.

The petition for rehearing is denied.

(2)
No. 91-1041



In The
Supreme Court of the United States
October Term, 1991

GREGORIO D. TAITAGUE AND HENRY BLAS,
Petitioners,
v.

FIRST ISLAND INDUSTRY, INC., A GUAM CORPORATION; CALVO'S INSURANCE UNDERWRITERS, INC., A GUAM CORPORATION; OXFORD PROPERTIES AND FINANCE, LTD., A HONG KONG CORPORATION; THE ESTATE OF MARIA TORRES MARTINEZ, DECEASED, BY FATHER VICENTE T. MARTINEZ, ADMINISTRATOR; and all other persons unknown (DOES I through V) claiming any right, title, estate, lien or interest in the real property described in complaint adverse to Petitioners' ownership, or any cloud upon Petitioners' title thereto,

Respondents.

BRIEF OF RESPONDENT FIRST ISLAND
INDUSTRY IN OPPOSITION TO PETITION FOR A
WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

MARK E. COWAN, ESQ.
ARRIOLA, COWAN & BORDALLO
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*Counsel for Respondent
First Island Industry*

QUESTION PRESENTED

Whether Respondents, bona fide purchasers for value, may be deprived of their registered title under Guam's Torrens Act when Petitioners, whose predecessor did not receive statutory notice of the original land registration proceeding but subsequently discovered the decree had been entered failed to challenge its validity within a period of limitations commencing with discovery of the Decree.

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RESPONDENT FIRST ISLAND INDUSTRY'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

STATEMENT OF THE CASE

This action was brought in 1979 as a quiet title action under Guam Civ. Proc. Code § 738. The complaint asserts an action to quiet title to all of a parcel of land (CR 26-1) but appears in substance was filed to vacate a prior Land Registration Decree under which title to only a portion of the property was registered to Respondents' predecessors in interest as a part of Lot B, Dandan, and to establish Petitioners' title to the disputed portion of Lot B against that of Respondents. (TR 144, 195)

Petitioners sought to invalidate the decree because their predecessor, Baldovino Taitague, had not been given notice of the land registration action as required by statute.¹ Respondents argued and the trial court held, that Guam's Torrens Act protects bona fide purchasers for value against claims of persons aggrieved by entry of the original decree. (CR 26-83 p. 4-5) Respondents also

¹ This action was brought in the name of Baldovino Taitague but in 1978, more than a year prior to filing the action, he had conveyed the property to Petitioner Gregorio T. Blas. Ex. 3. Gregorio Blas in 1986 conveyed a one-half interest to Petitioner Henry Blas. Ex. 4. both conveyances refer to the map, see pages 4 and 5, *infra*, prepared in 1975 which showed the conflicting prior registration of Lot B, Dandan. In this action Petitioners seek to vindicate their predecessor's right to notice and not their own. Baldovino Taitague did not take any action to vindicate his rights, or to challenge the decree while he still held title.

argued that Petitioners were barred from attacking the decree because they failed to act within the applicable statute of limitations. (CR 26-44, TR 8-10, 170)

Petitioners appealed, and the District Court of Guam Appellate Division affirmed the trial court's decision. Petitioners then appealed to the U. S. Court of Appeals for the Ninth Circuit, which in an unpublished decision, held that Petitioners' challenge to the land registration decree was barred by limitations. Petitioners filed a petition for re-hearing in the Court of Appeals, asserting for the first time that a statute of limitations could not constitutionally be applied to "one who is in complete enjoyment of all that he claims." Pet. Br. at 10.² The petition for re-hearing was denied and the petition for certiorari in this Court ensued.

◆

STATEMENT OF THE FACTS

A. The 1964 Guam Land Registration Action and Subsequent Transfers of Lot B.

In 1964 Pedro and Maria Martinez filed a petition to register their title to a large tract of land in Guam known as Lot B, Dandan, under Guam's Land Title Registration Act, Guam Civ. Code § 1157 *et seq.* A Decree of Registration and Certificate of Title (Ex. A) were issued to them in

² Although not precisely clear from Petitioners' statement of this asserted constitutional argument, Petitioners appear to view this standard as relating to possession of the disputed property

1964.³ Respondents are their successors in interest and Certificate of Title holders to Lot B.

The 1964 land registration was supported by a survey map which provided a legal description in metes and bounds of Lot B. The map shows that the surveyor relied upon a similar 1915 survey map also stating the property description in metes and bounds. (LR 32-64 Ex. 2)⁴

In 1972 the Martinezes sold Lot B to James S. Lee and Co. (Guam), Ltd. and Calvo Finance Corp. (Exs. F and G) A new Certificate of Title was issued to the purchasers in 1974. Ex. B. Further transfers subsequently occurred and new certificates issued as required by the Torrens Act. Exs. C, D and E.

B. Petitioners' Claim.

Petitioners are the successors to Baldovino Taitague and others as claimants to a tract of land referred to herein as the Taitague Land. Their claim of title derives from a 1933 Guam Naval government deed issued when their predecessors redeemed from a tax sale. The 1933

³ The trial court took judicial notice of its file in the Land Registration Case (LR 32-64) and the file was part of the record on appeal.

⁴ Although the "Ugum River" was depicted on both the 1964 and 1915 maps as abutting in part the boundaries of Lot B, the legal description does not refer to the river or its course, nor does it describe the river as a boundary or show that the course of the river modifies the metes and bounds description on either map.

deed did not contain any metes and bounds description of the property or reference to any survey map, but defined the property by general references to adjacent landowners and landmarks. (Ex. 1) The exact location of the property could not be located by reference to the description alone. (Ex. 1)

The Taitague Land has never been registered nor was it surveyed to depict its claimed boundaries until the 1975 survey referred to below. See page 5, *infra*. The uncertain location of the Taitague land was shown at trial when Petitioners relied upon a subsequent survey map which showed a distinctly different configuration to the boundaries of their claim,⁵ although both maps showed the land now in dispute as part of the claim, subject to its prior registration as part of Lot B.

The disputed part of Lot B is rural and isolated. No road leads to that portion of Lot B. (Suppl. TR 5, 10). When the trial judge inspected the property, access was achieved by hiking into the land and wading across the Ugum River. At the time of trial and of the court's inspection of the property there was no indication of any then current usage or occupation of the property.

The trial court found generally that Petitioners had been in possession of the disputed property since the late 1930's, but Respondents contended in the appeals below

⁵ Trial Court Exs. 2 and 5. Part of the land included in the initial 1975 survey had later been determined to belong to others and registered to those other owners. TR 112-113. Notwithstanding these determinations, the area of the later survey was significantly larger than originally claimed and stated in the record title. (Exs. 1, 2, 5)

that this cursory finding was unsupported by the record before the trial court and that the record failed to show possession after 1975. (CR 18 p. 1-2, First Island Industry's Reply Brief at 1-2)⁶

C. Petitioners' Discovery of the Conflicting Title Created by the Land Registration Decree.

In 1975 Baldovino Taitague discovered as a result of the preparation of the initial 1975 survey that a portion of the Taitague land had been registered as part of Lot B under the 1964 decree. The record of the land registration case concededly fails to show that he was given notice of the land registration proceeding. Petitioners testified at trial that Baldovino Taitague had been unaware of and had not received notice of the 1964 land registration case.⁷

⁶ Neither the Appellate Division nor the Court of Appeals disturbed this finding, but those courts did not have before them Petitioners' constitutional argument to this Court regarding the effect of possession on the statute of limitations. Petitioners' current contention, if considered by this court, notwithstanding its lack of constitutional relevance, *see* pages 11-12. *infra*, would give the issue of possession in the period of limitations a significance it did not have based on Petitioners' arguments and theory of the case below.

⁷ Respondents have never conceded that the Taitague Land originally included the portion of Lot B at issue in this action, nor Petitioners' predecessor's alleged use or possession of the disputed portion of Lot B. However, Respondents at trial of this action which occurred twenty-four years after the original registration, were not in a position to and did not offer independent evidence on these issues. At the time of trial, Baldovino Taitague was deceased, as were both Martinezes.

Baldovino Taitague therefore had actual knowledge in 1975 that a petition for land registration had been filed which asserted title to part of what he claimed to be his land, and that a Decree had been entered thereon establishing an independent title under the Torrens Act. He did nothing to vacate the Decree or give notice of any defect therein until 1979, more than three years after his discovery.

The record does not show the original registrants had actual knowledge that Baldovino Taitague was in possession of or had any claim to the disputed portion of Lot B, nor any fraud in the 1964 land registration, nor does the record show that any of the subsequent title holders when they acquired their interests had actual knowledge of any claim or use by Baldovino of the disputed portion of the property until summons was issued and served in 1980, a year after the case was filed. Petitioners have not contended any defect in the Decree was evident on its face. The status of the Respondents as bona fide purchasers for value is confirmed by the court's findings, and is not disputed by Petitioners. (CR 26-83 p. 4)



SUMMARY OF ARGUMENT

1. No federal question is presented because this Court has consistently held that a conflicting claim of title, even though based upon the due process clause or other provision of the constitution, may be barred by limitations if not timely made.

2. Whether a statute of limitation runs against an action to invalidate a Torrens decree, and whether possession is relevant to application of the statute of limitations in such an action, are questions of local law.

3. Petitioners' constitutional claim is based upon the factual premise that they were in possession during the limitations period, which is not supported by the record below.

REASONS WHY CERTIORARI SHOULD NOT BE GRANTED

1. **A Statute of Limitations May Bar an Attack on a Conflicting Title Even When the Conflicting Judgment, Deed or Claim is Said to be Void Under the Due Process Clause or Other Provisions of the Constitution.**

Petitioners admit that the only decision of this Court they cite to their contention that a statute of limitations may not constitutionally run against a person in possession, reached a contrary conclusion. Pets.' Br. at p. 10, citing *Leffingwell v. Warren*, 67 U.S. (2 Black) 599 (1862). Petitioners distinguish that case on the ground that it was decided before the adoption of the Fourteenth Amendment.⁸ But this Court has consistently sustained statutes of limitation as a bar against assertions that a conflicting property claim was void under the Fourteenth Amendment and other constitutional provisions. *United States v.*

⁸ It was, however, decided after the adoption of the Fifth Amendment.

Mottaz, 476 U.S. 834 (1986) (conveyance by United States said to be void and in violation of due process); *Block v. North Dakota ex rel Bd. of Univ. and School Lands*, 461 U.S. 273 (1983); *Northern Colorado Irrigation Co. v. O'Neil*, 242 U.S. 20 (1916) (judgment entered without notice); *Saranac Land and Timber Co. v. Roberts*, 177 U.S. 318 (1900); *Vance v. Vance*, 108 U.S. 514 (1883).

Thus, a statute of limitations can run on a constitutional claim. *Block v. North Dakota*, 461 U.S. at 292. In *Kieley v. McGlynn*, 88 U.S. (21 Wall.) 503 (1875) the Court sustained the conclusive character of a California probate decree against heirs who had not received notice and whose claims had not been asserted within a one year statutory period for attack on the decree, or a three year period for relief based on fraud.⁹ As in this case, the property in *Kieley* had passed to third party purchasers.

Applying a statute of limitations does not shift the burden of proof on the merits of the underlying title issue to Petitioners. That occurred in *Armstrong v. Manzo*, 380 U.S. 545 (1965) and *Coe v. Armour Fertilizer Works*, 237 U.S. 413 (1915), which Petitioners cite, because the Court incorrectly consolidated a challenge to a void judgment with re-litigation of the merits of the underlying action, effectively imposing the burden of proof of the entire

⁹ In their briefs before both appellate courts below, Respondents suggested that Guam's three year statute of limitations applicable to actions based on fraud or mistake, which by its terms runs from the discovery of the cause of action, See Guam Civ. Proc. Code § 338(4) might conceivably apply to persons with claims such as Petitioners, yet Petitioners' claim in this case would have been barred even under the longer three year period of limitations.

controversy upon the person challenging the void judgment. To the extent the burden of proof shifted here, such occurred because of Petitioners' election not only to invalidate the decree because of the lack of notice, but also to establish affirmatively their own title to the property in dispute. Petitioners make no showing that it was necessary for them to go so far in order to attack the decree for lack of notice. No such burden was imposed in *Francisco v. Look*, 537 F.2d 379 (9th Cir. 1976), which involved a successful attack on a Guam registration decree entered without statutory notice, when no innocent purchasers had intervened.¹⁰ Even a void judgment, especially one *in rem* or concerning status (e.g., the adoption decree in *Armstrong v. Manzo*) may subject the person against whom it is entered to some burden in vacating it. That burden arises because such a judgment may by its character still be of practical effect until the person affected by it acts to vacate it. It is not a burden on the merits; it is a burden to assert a violation of a constitutional right.

2. Territories May Regulate Land Ownership Within their Jurisdiction, and Whether a Statute of Limitations Applies in an Action Concerning Title is a Matter of Local Law.

A Territory has the power to determine the manner and conditions of holding title to real property and has a

¹⁰ Even if they had succeeded in vacating the decree, Petitioners would have had to defend against the claims of title contained in the original petition, and might in that case have chosen to assert affirmatively their title, but these are the same burdens and options they would have faced if served originally in the land registration proceeding.

strong interest in the marketability of real property within its jurisdiction, and in resolving disputes as to titles. *Shaffer v. Heitner*, 433 U.S. 186, 207-208 (1977); *Hamilton v. Brown*, 161 U.S. 256 (1896); *Arndt v. Griggs*, 134 U.S. 316 (1890); *Jackson v. Lampshire*, 28 U.S. (3 Pet.) 280, 290 (1830); *Tyler v. Judges of the Court of Registration*, 175 Mass. 71, 55 N.E. 812 (1900).

. . . [A state] has control over property within its limits; and the condition of ownership of real estate therein, whether the owner be stranger or citizen, is subject to its rules concerning the holding, the transfer, liability to obligations, private or public and the modes of establishing titles thereto . . .

. . . The well-being of every community requires that the title to real estate therein shall be secure, and that there be convenient and certain methods of determining any unsettled questions respecting it. The duty of accomplishing this is local in its nature. *Arndt v. Griggs*, *supra*, 134 U.S. at 321-22.

Whether a Territory applies a statute of limitations in resolving disputes as part of its land tenure system is a matter of local policy. The extent to which possession is determinative in local property law, in actions involving title disputes, and in statutes of limitations applicable to such actions is also a matter of legislative choice as to what is beneficial in that jurisdiction. A state may provide by statute to quiet to one person another person's title on the basis of possession without violating the due process clause. *Montoya v. Gonzales*, 232 U.S. 375 (1914). But whether a state does so is a matter of local law, *Block v. North Dakota*, 461 U.S. at 292, and whether a state

prefers possession to record title as a means of settling titles is a matter of local law and policy and not constitutional mandate.¹¹

Petitioners' constitutional argument based on possession relies on a series of cases involving tax deeds, which, with one exception all emanate from state courts. These cases are inapposite. A tax deed purchaser at common law takes his deed subject to all defects in the proceedings and to any challenges to the validity of the sale. 72 Am. Jur. 2d *State and Local Taxation* §§ 948, 981. Unlike a tax deed, the statutory context of this case is a territorial system to determine land titles and to protect owners and bona fide purchasers from claims inconsistent with their title.

3. Possession Is Not A Constitutionally Dispositive Standard to Determine whether a Statute of Limitations May Run.

This Court has not indicated possession is constitutionally dispositive in determining whether a statute of

¹¹ Guam law, at least as to property subject to its Torrens system, relies upon record title and not possession as a means of determining disputes over land titles. Guam Civ. Code § 1157.35 eliminates the concept of constructive notice arising out of possession. See *Sterling National Bank v. Fischer*, 75 Col. 371, 226 P.2d 146 (1924). Guam's Torrens Law also provides a title cannot be acquired to registered land by adverse possession. Guam Civ. Code § 1157.34.

limitations can run and it was not a factor in any of the decisions cited herein. See cases cited at 7-8, *supra*.¹²

Like this case, in *Block v. North Dakota*, and *United States v. Mottaz*, *supra*, the Plaintiffs had actual knowledge of the adverse title claim and yet did not act in a timely manner. The statute of limitations in those cases explicitly ran from the date of discovery of the conflicting claim. The Court of Appeals in its decision below in effect construed the statute in this case to commence to run with Petitioner's discovery of the original decree. Similarly, in *Davis v. Dow Chemical Company*, 819 F.2d 231 (9th Cir. 1987), the Ninth Circuit held that an Arizona statute of limitations would be applied to run from the date of discovery of the cause of action although the statute did not expressly so provide, when the statute would otherwise have violated the Arizona constitution. 819 F.2d at 234, 235.¹³

The California Supreme Court in *McCaslin v. Hamblen*, 37 Cal.2d 196, 231 P.2d 1 (1951), qualified its earlier holding in *Tannhauser v. Adams*, 31 Cal.2d 169, 187 P.2d

¹² Further, it appears that in *O'Neil*, *supra*, 242 U.S. at 24, the party affected by the prior decree had continued in the use of the water rights at issue notwithstanding the decree and therefore had remained in possession. The action was filed to enjoin interference with his ditch.

¹³ A claim that a decree was entered without the original registrant giving notice required by statute, would present a compelling case for tolling of any applicable statute of limitations in an action against an original registrant. See *Glus v. Brooklyn Eastern Terminal*, 359 U.S. 231 (1958).

716 (1947), which Petitioners cite to support their argument regarding possession, as follows:

the rule of inapplicability of statutory limitation has been said to apply as to owners who because of their possession could not be assumed to have actual knowledge of claims of adverse interest by persons not in possession.

McCaslin, 231 P.2d 1 at 3.¹⁴ In this case, the Court of appeals relied upon actual knowledge of the decree as the commencement of the statute of limitations and did not address possession as a basis to impute knowledge or lack of knowledge. That possession relates to knowledge is suggested by the fact that in certain types of *in rem* proceedings such as those in admiralty, or those initiated by attachment, physical seizure of property, where it has the effect of dispossessing others, is viewed as important because it is a means of giving notice of the proceedings to interested parties. *Shaffer v. Heitner*, 433 U.S. at 198; *Tyler v. Court of Registration*, 55 N.E. at 815. Additionally, any rule respecting possession would have no application in the case of unimproved and unoccupied land. *McCaslin*, 231 P.2d at 3. Hence possession is of little relevance and an arbitrary constitutional standard where the land at issue is vacant and Petitioners had actual knowledge of the conflicting decree.¹⁵

¹⁴ The court also qualified its earlier statement in *Tannhauser* that a statute of limitations may not run against a person in possession as being dicta. *McCaslin*, 231 P.2d at 3.

¹⁵ Should the Guam Legislature enact the rule urged by Petitioners the statute would plausibly be subject to attack on due process and equal protection as arbitrary and lacking a rational basis.

A person who claims physical possession but who files an action asserts he has under local law both a cause of action and need for relief if he is to be afforded "all he claims". The issue in this case is record title, since even if the decree is absolutely void as Petitioners contend, they will not have "all they claim" under local law so long as the decree exists which appears valid and is valid as to all persons other than Petitioners¹⁶, yet Petitioners fail to attack the decree, especially in view of the unsettled nature of their own title (*supra* p. 4) and the conclusive character of a Torrens decree under Guam law.

4. Petitioners' Contention That a Statute of Limitations Cannot Run Involves As Well As Questions of Local Law, Factual Issues Not Resolved in the Record.

The Court of Appeals concluded that even without regard to the provisions of the Torrens Act protecting

¹⁶ Guam's Torrens Act provides for notice to be given to known claimants, occupants and adjoining landowners, and for service by publication to unknown claimants. Guam Civ. Code §§ 1157.4, 1157.11. Such notice is constitutionally sufficient. *Hamilton v. Brown*, 161 U.S. 256 (1896); *Arndt v. Griggs*, 134 U.S. 314 (1890); *Tyler v. Judges of the Court of Registration*, 175 Mass. 71, 55 N.E. 812 (1900). Guam in its Torrens Act does not proceed without constitutionally sufficient statutory requirement for notice to known and unknown persons interested in the property, unlike *Armstrong v. Manzo*, 380 U.S. 545 (1965), and *Penoyer v. Neff*, 95 U.S. (5 Otto) 714 (1877). Also, Guam has not improperly attempted to use its power over property located within its jurisdiction to adjudicate claims unrelated to that property, unlike *Penoyer v. Neff*, 95 U.S. (5 Otto) 714, and *Shaffer v. Heitner*, 433 U.S. 186 (1977). Petitioners' untimely claim is based upon the failure to give their predecessor statutory notice, not insufficiency of statutory notice requirements.

subsequent purchasers for value, and assuming lack of notice would give Petitioners a right to relief, Petitioners were barred because they did not act within the time period applicable against original registrants for actions to set aside decrees even if the statute of limitations were tolled until discovery of the decree.

Petitioners now contend that a statute of limitations cannot constitutionally be applied against a person "in complete enjoyment of all he claims." Virtually none of the cases and authorities Petitioners now cite in this connection were cited below prior to the petition for rehearing. Yet the statute of limitations issue was raised in Respondents' answer and argued as an alternate ground of decision to both appellate courts.

Petitioners belated contention undermines their original claim in the trial court that the land registration could never have effect as to them, since it concedes that a statute of limitations can bar a challenge to an otherwise invalid tax deed or decree *in rem*.

In their restated theory the application of the statute of limitations depends upon whether Petitioners were in the relevant limitation period in possession. However, as Respondents contended in the appellate courts below, the trial court's findings do not clearly show possession after 1975 and, equally important, the evidence does not support such a finding. The issue of possession in the limitations period was not specifically addressed or resolved in this case because Petitioners did not raise their constitutional issue in a manner that made it necessary to do so. Certiorari should not be granted to review a belatedly

raised constitutional issue, which depends upon facts not supported by the record.

CONCLUSION

Petitioners' present contention that a statute of limitations cannot run on their claim because they were in possession concedes that a statute of limitations may run if they were not in possession, or, differently stated, that there is no absolute constitutional bar against a local law statute of limitations on claims such as that of Petitioners.

Petitioners misjudge the effect of the unpublished decision of the Court of Appeals.¹⁷ The decision reflects the Petitioners' own neglect and that of their predecessor, and not any departure from established constitutional standards. The decision affects and is of concern only to those persons who, learning of the entry of a decree of registration affecting property claimed by them, without notice to their predecessor in interest, elect to remain silent while the decree remains in effect, inevitably to be relied upon by other persons.

The Court of Appeals in its decision did not seek to diminish any rights available to Petitioners, and to the contrary gave Petitioners the benefit of the assumption

¹⁷ The Court of Appeals concluded its disposition was inappropriate for publication under Circuit Rule 36-2. Accordingly, by the terms of the decision and Court of Appeals Circuit Rule 36-3 which prohibits regarding as precedent or citing an unpublished disposition, the decision of the Court of Appeals has minimal, if any, effect as precedent.

that in an action against an original Registrant the decree could be set aside, and that the period of limitations to do so could be tolled until Petitioners' predecessor knew of the entry of the decree. Yet, the Court of Appeals concluded that even granting such assumptions, Petitioners still would be barred since they and their predecessor failed to act.

Moreover, by deciding the case on such basis the court explicitly did not reach, and therefore preserved, the issue whether the provisions of the Act which protect bona fide purchasers for value, could have barred Petitioners' claim if they, or their predecessor, had acted timely.

The court therefore properly adopted an analysis based on a construction of the Torrens Act that avoided potentially overturning significant portions of the Act on constitutional grounds, and gave the Petitioners the benefit of every potential statutory construction in their favor as well as reasonable opportunity to assert the invalidity of the decree if they had chosen to do so.

The Petition should be denied.

Respectfully submitted,

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APPENDIX

(Statutes as in effect in 1964 and on the filing of this action.)

GUAM CIVIL CODE, § 1157.4

Land brought under the Act by filing petition: contents, etc. All land may be brought under the operation of this Act by the owner or owners of any estate or interest therein, whether legal or equitable (other than an individual share or an easement) by filing with the clerk of the court his or her or their verified petition to the Island Court of Guam, which petition shall set forth the following facts, to wit:

Contents of petition. The full name, occupation, residence, and post office address of the applicant or applicants, and where any applicant appears by any representative because of any disability, also the full name, occupation, residence, and post office address of the person so representing the applicant and the reason for his so acting; if the application is by a corporation, its name, when and where incorporated, its principal place of business, and the names and post office addresses of its president and secretary, and if a foreign corporation, the name and address of the resident agent shall be included in addition to the other requirements; whether or not the applicant is married, and if married, the full name and residence of the husband or wife; and if unmarried, whether he or she has been married, and if so, how the marriage relation terminated, and if the marriage relation terminated by annulment or divorce, where and by what court; that each of the applicants is of full age of

eighteen (18) years and free from any disability, or if a minor or under disability his age and nature of such disability, and if a guardian has been appointed the name and address of the guardian and when and by what court appointed; a description of the land; the value at which the land and permanent improvements, if any, were assessed on the last assessment for taxation.

If the application is by more than one person, any one of whom claims titles in severalty to any part of the land described in the petition, the particular part of the land to which each petitioner severally claims title; a statement of the estate or interest which each applicant has or claims and whether or not the same is community property or is subject to a homestead or to any easement, lien or encumbrance and if so the name and the post office address, if known, of each holder thereof, the nature and the amount of the same, and if recorded, the book and page of the record; a statement of whether or not the land is occupied and if so, the full name and post office address of each occupant, and what interest he has or claims; a statement describing the claim of any other person who has any estate or claims any interest in the land or any part of the land, in law or equity, in possession, remainder, reversion, or expectancy, with the names and post office addresses, if known, of every such person, together with the names and post office addresses of all the owners to the adjoining lands, so far as the same can be ascertained upon diligent inquiry. If the application is by a husband or wife and the property is community property or is subject to a homestead, both spouses must join in the application; persons who collectively claim to own the entire legal estate in fee simple to the whole or

any part of the land may join in the petition; a corporation may petition by its duly authorized agent; the estate of a deceased person by the administrator or executor and a minor or other person under disability by his legal appointed guardian, but the person in whose behalf the application is made shall be named as applicant. [Enacted 1953; amended by P.L. 2-61, effective February 9, 1954.]

GUAM CIVIL CODE § 1157.11

Notice of petition; service; objection or assent to application. When the court shall order notice given a notice must be issued, under the seal of the court, which shall contain the name of the court, the name or names of the applicant, or applicants and a particular description of the land involved, which notice shall be directed to all parties appearing by the petition or the petition and abstract or by the report of the Examiner of Titles if any, to have any interest in the land or any part thereof and which notice shall contain a statement that the petition has been filed by the applicant or applicants for the registration of the title to the land described therein as provided by this Act and praying for a decree declaring the applicant or applicants to be the owner or owners in fee of such land in accordance with the prayer of said petition and which notice shall direct all whom it may concern to appear and answer said petition within ten (10) days after personal service, and that otherwise the court will grant said petition and direct registration of the title to said land in accordance with the terms of this Act, and that said person or persons so served will be forever barred from disputing the same.

Service of petition. When the notice is issued, service thereof shall be made as follows: In all cases said notice shall be published in a newspaper published in the Territory of Guam, said newspaper to be designated by the court, for four (4) successive weeks; if the notice is published in a daily newspaper, publication therein once a week for four (4) successive weeks shall be sufficient. In all cases said notice shall be posted in Agana and posted in at least three (3) places in the district in which the land is located, for such length of time and at such places as may be designated by the court. All parties who have not joined in the petition, or assented thereto in writing, and who appear by the petition or petition and abstract, or report of the examiner of titles to be interested in the fee, all occupants named in the petition and the husband and wife of the applicant, if married, shall be personally served with a copy to the notice, attached to a copy of the petition if they reside in Guam and can, with reasonable diligence, be found and served therein. All owners of adjoining lands who have not give their written consent to the hearing of the petition and who reside in Guam and can, with reasonable diligence, be found and served therein, shall be served with a copy of said notice, without a copy of said petition, personally; provided, that for all applications filed on and after May 1, 1950, the notice as hereinbefore described need not be published in full but it shall be sufficient publication if there is published the following information: the name of the Court in which the application is filed, the name or names of the applicant or applicants, the lot number and municipality of the property to be registered, the civil case number assigned to the application, and a statement referring

interested persons to the clerk of the court for further particulars and for an examination of the notice in full.

Service of notice by mail. As to all persons who have not joined in the petition or who have not in writing assented to the hearing thereof, who do not reside in Guam or who cannot, with reasonable diligence, be found and served therein, a copy of such notice, without a copy of the petition shall, within thirty (30) days after the first publication of such notice, be sent to such party at his last known place of residence, by mail, postage prepaid and if his last known place of residence cannot be, with reasonable diligence, ascertained, then such notice shall be mailed to him in care of the clerk of the District Court of Guam: provided, however, that as to all such persons so to be served by mail who appear by the petition, or petition and abstract, or report of the examiner of titles to be interested in the fee, a copy of the petition shall be attached to the copy of the notice mailed to them as herein provided: provided further, that no copy of abstract, order, or map need be served with any notice.

All persons who claim an interest may appear and object to the granting of the application and if such objection is sustained the cost of the same shall be paid by the applicant; if not, by the person so objecting. The time for appearance shall be ten (10) days after personal service within Guam, thirty (30) days after personal service out of Guam; all persons not required by this section to be served personally shall have sixty (60) days after the first publication of such notice within which to appear.

All persons having or claiming any interest in the land or any part thereof may assent in writing to the registration thereof, and the person thus assenting need not be named as a defendant in the registration proceeding, or, if already named as a defendant need not be served with notice therein. Such assent shall be executed and acknowledged in the manner now required by law for the execution and acknowledgement of a deed and shall be filed with the clerk of the court. [Enacted 1953.]

GUAM CIVIL CODE § 1157.15.

Decree in rem: effect. A decree of the court ordering registration shall be in the nature of the decree in rem, shall forever quiet the title to the land therein ordered registered and shall be final and conclusive as against the rights of all persons, known and unknown, to assert any estate, interest, claim, lien, or demand of any kind or nature whatsoever, against the land so ordered registered or any part thereof, except only as in this Act provided. [Enacted 1953.]

No. 91-1041

In The
Supreme Court of the United States
October Term, 1991

GREGORIO D. TAITAGUE and HENRY BLAS,
Petitioners,
v.

FIRST ISLAND INDUSTRY, INC., A GUAM
CORPORATION; CALVO'S INSURANCE
UNDERWRITERS, INC., A GUAM CORPORATION;
OXFORD PROPERTIES AND FINANCE, LTD.,
A HONG KONG CORPORATION; THE ESTATE
OF MARIA TORRES MARTINEZ, DECEASED, BY
FATHER VICENTE T. MARTINEZ, ADMINISTRATOR;
and all other persons unknown (DOES I through
V) claiming any right, title, estate, lien
or interest in the real property described in
complaint adverse to Petitioners' ownership,
or any cloud upon Petitioners' title thereto,
Respondents.

Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITIONERS' REPLY BRIEF

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A.

STATUTE OF LIMITATIONS MAY NOT BE APPLIED TO A JUDGMENT VOID FOR WANT OF JURISDICTION

A judgment void because of the failure to furnish statutorily required service of process cannot be made the subject of a statute of limitations or other similar time barrier. *In Re V-I-D*, 158 F.2d 964 (7th Cir. 1947); *Simonds v. Norwich Union Indemnity Co.*, 73 F.2d 412 (8th Cir. 1934); *Woods Bros. Const. Co. v. Yankton County S.D.*, 54 F.2d 304 (8th Cir. 1931); *Pollitz v. Wabash R. Co.*, 180 F. 950 (C.A. S.D. N.Y. 1910); *Arenas v. United States*, 95 F. Supp. 962 (S.D. Cal. 1951); *People v. Greene*, 74 Cal. 400, 16 P. 197 (1887); Anno. 154 ALR 818 Comment Note – Lapse Of Time As Bar To Action Or Proceeding For Relief In Respect Of Void Judgment. cf. *Hansberry v. Lee*, 311 U.S. 32 (1940).

This principle has been incorporated into the Territory of Guam's statutory scheme. The Territory of Guam has patterned its Rules of Civil Procedure after the Federal Rules of Civil Procedure. Rule 60(b)(4) of the Territory of Guam's Rules of Civil Procedure provides as follows:

(b) Mistakes, Inadvertence, Excusable Neglect, Newly Discovered Evidence, Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or **the party's** legal representative from a final judgment, order, or proceeding for the following reasons: . . . (4) the judgment is void; . . .

This section has been construed in the federal context as precluding any discretion from being exercised when

entertaining a motion pursuant to this rule, *Thos. P. Gonzalez Corp. v. Consajo Nacional Etc.*, 614 F.2d 1247 (9th Cir. 1980), and is expressly exempted from any time limitation, *Meadows v. Dominican Republic C.A.*, 817 F.2d 517 (9th Cir. 1987). It is presumed that Guam's Rule 60(b)(4) would be similarly construed.¹

Also, California's Code of Civil Procedure § 473 which has been adopted by Guam essentially verbatim has specifically been found *not* to apply to void judgments notwithstanding the unequivocal express language of the statute making same applicable to judgments void for want of service of process and limiting the time in which they may be set aside to one year. *People v. Greene, supra*.

B.

GUAM'S LAND REGISTRATION LIMITATION STATUTE DOES NOT PROVIDE FOR KNOWLEDGE OF REGISTRATION TO BEGIN THE RUNNING OF THE LIMITATION PERIOD

In contradistinction to the limitation statute examined in *United States v. Mottaz*, 476 U.S. 834 (1986) and *Block v. North Dakota ex rel Bd. of Univ. and School Lands*, 461 U.S. 273 (1983), cited by Respondents, Guam's Land Registration Limitation Statute does not require or provide for knowledge of the registration to commence the

¹ "We look to relevant Ninth Circuit authority when interpreting a Guam statutory rule that closely tracks a federal procedural rule." (Citations omitted). *de Vera v. Blaz*, 851 F.2d 294 (9th Cir. 1988).

running of the limitation period. Rather, it provides for a one year period from the "registration" of the property.

Also, in contradistinction to the statutory language examined in *Davis v. Dow Chemical Company*, 819 F.2d 231 (9th Cir. 1987),² also cited by Respondents, the Guam statute's language is clear and unambiguous so as to preclude any interpretation giving to it a meaning inconsistent with its express language or permitting the engrafting of an exception onto same. *United States v. Bliss*, 172 U.S. 321 (1899); *Amy v. City of Watertown*, 130 U.S. 320 (1888); *Stewart v. Stewart*, 152 Cal. 162, 92 P. 87 (1907); *Nathanson v. Superior Court of Los Angeles County*, 12 Cal.3d 355, 525 P.2d 687 (1974); *Vandall v. Teague*, 142 Cal. 471, 76 P. 35 (1904); *Morrow v. Barker*, 119 C. 65, 51 P. 12 (1897).

C.

THE DOCTRINE OF EQUITABLE TOLLING CANNOT BE USED TO RENDER CONSTITUTIONAL AN OTHERWISE UNCONSTITUTIONAL STATUTE

The Ninth Circuit in dicta indicated that if the Petitioners had filed their motion within one year of learning

² It is instructive to note that the Ninth Circuit in the *Davis v. Dow Chemical Company*, *supra*, decision was construing the Arizona wrongful death statute relying upon the Supreme Court of Arizona's pronouncements in *Kenyon v. Hammer*, 142 Ariz. 69, 688 P.2d 961 (1984). In *Kenyon*, *supra*, the Supreme Court of Arizona indicated that the discovery rule is simply a judicial construction of the word "accrues" which word was used in the Arizona wrongful death statute.

of the "conflicting claim" that it might have applied the doctrine of equitable tolling. This is *obviū*s dicta because Petitioners did not file their action to Quiet Title within one year of learning of the "conflicting claim." Equitable tolling is not a rule of statutory construction but rather a rule of practice to solve exceptional problems. *Board of Regents v. Tomanio*, 446 U.S. 478 (1980); *American Pipe & Construction v. Utah*, 414 U.S. 538 (1974). Therefore, its operation may not be used as a tool of statutory construction to render constitutional an otherwise unconstitutional statute.

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